Court No.2

Civil Revision No. 120 of 2001
(Old No. 129 of 1999)

Sriniwas	……	Defendant/Revisionist.
	Versus	
Dr. R.K.Agarwal	…….	Plaintiff/Respondent.

…….

Hon'ble P.C.Verma,J.

This revision is directed against the order dated 05.02.1999 passed by the Special Judge/Judge Small Cause Courts, Nainital on the application No.87-C moved by the defendant in S.C.C. Suit No.36 of 1988 seeking amendment in the written statement to the effect that the property has been sold by the plaintiff. The basis of the averment was a cutting of the newspaper report published in the newspaper in an advertisement column. It is alleged by the revisionist that news was published on the statement of the respondent/plaintiff. The revisionist/defendant did not move any application or did not make any effort to examine the respondent/plaintiff as to whether the plaintiff/respondent had given the statement which was published in the newspaper. Therefore, the said newspaper report which was published on advertisement column cannot be read as piece of evidence. Reliance is placed in the case of State of Haryana and others versus Ch.Bhajan Lal and another, reported in A.I.R. 1993 Supreme Court, page 1348.

Learned counsel for the revisionist submitted that the order of the trial court suffers from miscarriage of justice as the question should have been decided after allowing the application for amendment and framing of issues. The argument of the learned counsel for the revisionist is misconceived. Before allowing the application for amendment the point was to be decided as to whether the amendment sought should be allowed or the application should be rejected. The said point has been decided and the application for amendment has been rejected. The issue

could be framed after the amendment is allowed and amendment sought could become part of pleading.

The objection to the amendment application was filed and in the objection it has been stated by the plaintiff/respondent that it was only a delaying tact of the defendant and in additional objection a categorical denial of the alleged transfer finds place. The trial court while considering the application for amendment has noticed that several opportunities were given to the revisionist/defendant to lead evidence regarding the alleged sale by the plaintiff of the suit property. The defendant got orally examined one Sri Ramesh Kumar in whose favour the sale was alleged to have been executed according to the newspaper, Sri Ramesh Kumar has categorically denied that the property in suit has been sold in his favour. In a proceeding pending in Suit No.320 of 1992 in which he field an affidavit on oath before the court, it has been stated by him that he is the only attorney of the plaintiff to look after and manage the property. The copy of said affidavit was on record of this case.

The trial court has rejected the amendment application that the defendant could not prove the sale by the plaintiff.

Learned counsel for the revisionist urged all those grounds, which were taken before the trial court and invited the attention of this court on the objection filed by the plaintiff that there is no categorical denial of the sale. The learned counsel for the respondent submitted that in additional objection there is categorical denial of the alleged sale. However, the person in whose favour the sale alleged to have been made has denied on oath in an affidavit in suit No. 320 of 1992 that the property in suit was not sold but he was appointed only an attorney for looking after and managing the property. Despite the several

opportunities being given to the defendant he could not lead any documentary evidence to prove the sale.

Thus the order impugned in this revision does not suffer from any miscarriage of justice. I find no force in the revision.

The revision is dismissed. No order as to costs.

(P.C.Verma, J.)

24.09.2002
P.Singh